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4 UNITED STATES DISTRICT COURT
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA
6 OAKLAND DIVISION
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8 ALI R. POORSINA,
9 Plaintiff,
10 vs.
11 TAN TSENG, et al.,
12 Defendants.

Case No: 20-cv-09122 SBA

**ORDER DENYING MOTIONS FOR
DEFAULT JUDGMENT**

13 Plaintiff Ali R. Poorsina (“Plaintiff”), proceeding pro se, brings the instant action
14 against Defendants Tan Tseng (“Tseng”), Terrenz Kukant Cam (“T.K. Cam”), Boi Anh
15 Hong (“Hong”), and Kevin Tu Cam (“K.T. Cam”) (collectively, “Defendants”).

16 The procedural background is set forth in detail in the Order: (1) Granting Motion to
17 Set Aside the Entry of Default; (2) Denying Motion for Default Judgment; and (3) Denying
18 Motion to Consolidate Cases, which issued January 12, 2022 (“Order”). Dkt. 68. As is
19 pertinent here, the Order set aside the entry of default against Tseng, T.K. Cam, and Hong
20 based on ineffective service; default had not been entered against K.T. Cam. Given the
21 lack of effective service, the Order also denied Plaintiff’s motion for default judgment
22 against Defendants. The Order directed Plaintiff to complete service on Defendants within
23 30 days, noting that Defendants had authorized counsel to accept service on their behalf.

24 Thereafter, Plaintiff filed a “Motion Granting Plaintiff for Default Judgment and
25 Denying Defendants’ Motion to Strike and Set Aside the Clerk’s Entry of Default,” which
26 he entered as a “First Motion for Default Judgment by the Court.” Dkt. 69. Though
27 convoluted, the motion seeks reconsideration of the Order on the ground that Plaintiff
28 purportedly complied with its directive by serving Defendants through counsel on or about

1 January 14, 2022. Plaintiff later filed another document titled “Order Re Plaintiff’s Motion
2 for Default Judgment,” which he entered as a “Second Motion for Default Judgment by the
3 Court.” Dkt. 75. The “second motion” does not read as a motion (or comply with the civil
4 local rules governing motion practice), but rather, as an order entering default judgment
5 based on the service effectuated on January 14; it thus appears to be a proposed order
6 granting Plaintiff’s prior motion for default judgment in light of the recent service.¹

7 To the extent Plaintiff moves for reconsideration of the Order denying default
8 judgment based on service completed *after* the Order issued, the motion fails. A district
9 court may grant a motion for reconsideration under Federal Rule of Civil Procedure 59(e)
10 if, *inter alia*, it is presented with newly discovered evidence. Kaufmann v. Kijakazi, 32
11 F.4th 843, 2022 WL 1233238, at *6 (9th Cir. 2022). “For evidence to be considered ‘new’
12 for the purposes of Rules 59(e)/60(b), it must be of such a character that it would change
13 the outcome of the court’s prior decision.” Pirtle v. Cal. Bd. of Prison Terms, No. CIV. S-
14 04-518 FCD KJ, 2007 WL 2153094, at *1 (E.D. Cal. July 24, 2007). When the Order
15 issued, Plaintiff had not properly served Defendants and default judgment was properly
16 denied on that basis. Subsequent service—in compliance with the directive of the Order—
17 cannot change the outcome (or propriety) of that decision.

18 To the extent Plaintiff moves for default judgment anew, the motion likewise fails.
19 As noted in the Order, default judgment is a two-step process; a default judgment cannot be
20 granted unless the plaintiff has sought and obtained the entry of default by the Clerk. Fed.
21 R. Civ. P. 55(b)(2); Eitel v. McCool, 782 F.2d 1470, 1471 (9th Cir. 1986). Here, the entry
22 of default has not been entered against Defendants. Moreover, default may be entered only
23 when a defendant fails to plead or otherwise defend. Fed. R. Civ. P. 55(a); Benny v. Pipes,
24 799 F.2d 489, 492 (9th Cir. 1986) (“A failure to make a timely answer to a properly served
25 complaint will justify entry of a default judgment.”), amended, 807 F.2d 1514 (9th Cir.


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27 ¹ Pursuant to Civil Local Rule 5-1(f), proposed orders should be filed in PDF format
28 and attached to the applicable motion or other document. Additionally, proposed orders
should be identified as such, with the word “proposed” included in the caption.

1 1987). Even assuming the service on January 14 was effective, Defendants' response was
2 not yet due on January 24, when Plaintiff filed the instant motion. Indeed, since that time,
3 K.T. Cam has appeared, and Defendants have filed a motion to dismiss. Dkt. 78. Default
4 therefore cannot be entered against Defendants at this time. Franchise Holding II, LLC, v.
5 Huntington Restaurants Grp., Inc., 375 F.3d 992, 927 (9th Cir. 2004) (where a party has
6 appeared, a default entered by the clerk is "void *ab initio*").

7 For the reasons stated above, IT IS HEREBY ORDERED THAT Plaintiff's motions
8 for reconsideration of the Order denying default judgment and/or for default judgment
9 anew are denied. This order terminates Docket Nos. 69 and 75.

10 IT IS SO ORDERED.

11 Dated: 5/18/2022

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Richard Seeborg for Sandra B. Armstrong
United States District Judge